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EXTRAORDINARY

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PART II—Section 2

प्राधिकार से प्रकाशित
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इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके।

Separate paging is given to this Part in order that it may be filed
as a separate compilation.

LOK SABHA

The following Bills were introduced in Lok Sabha on the 5th August, 1971:—

Bill No. 110 of 1971

A Bill further to amend the Central Sales Tax Act, 1956.

Be it enacted by Parliament in the Twenty-second Year of the Republic of India as follows:—

- | | |
|---|--------------------------------------|
| <p>1. (1) This Act may be called the Central Sales Tax (Amendment) Act, 1971.</p> | <p>Short title and commencement.</p> |
| <p>74 of 1956. (2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.</p> | <p>Amendment of section 6.</p> |
| <p>2. In section 6 of the Central Sales Tax Act, 1956 (hereinafter referred to as the principal Act),—</p> <p>(a) in sub-section (1), after the words “on all sales”, the words “of goods other than electrical energy” shall be inserted;</p> <p>(b) for sub-section (2), the following sub-section shall be substituted, namely:—</p> | |

“(2) Notwithstanding anything contained in sub-section (1) or sub-section (1A), where a sale of any goods in the course of inter-State trade or commerce has either occasioned the movement of such goods from one State to another or has been effected by a transfer of documents of title to such goods during their movement from one State to another, any subsequent sale during such movement effected by a transfer of documents of title to such goods,—

(a) to the Government, or

(b) to a registered dealer other than the Government, if the goods are of the description referred to in sub-section (3) of section 8,

shall be exempt from tax under this Act:

Provided that no such subsequent sale shall be exempt from tax under this sub-section unless the dealer effecting the sale furnishes to the prescribed authority in the prescribed manner and within the prescribed time,—

(a) a certificate duly filled and signed by the registered dealer from whom the goods were purchased containing the prescribed particulars in a prescribed form obtained from the prescribed authority; and

(b) if the subsequent sale is made—

(i) to a registered dealer, a declaration referred to in clause (a) of sub-section (4) of section 8, or

(ii) to the Government, not being a registered dealer, a certificate referred to in clause (b) of sub-section (4) of section 8:

Provided further that it shall not be necessary to furnish the declaration or the certificate referred to in clause (b) of the preceding proviso in respect of a subsequent sale of goods if,—

(a) the sale or purchase of such goods is, under the sales tax law of the appropriate State, exempt from tax generally or is subject to tax generally at a rate which is lower than three per cent. (whether called a tax or fee or by any other name); and

(b) the dealer effecting such subsequent sale proves to the satisfaction of the authority referred to in the preceding proviso that such sale is of the nature referred to in clause (a) or clause (b) of this sub-section.”

3. After section 6 of the principal Act, the following section shall be inserted, namely:—

In-
section
of new
section
6A.

Burden
of
proof,
etc.,
in case
of
trans-
fer of
goods
claim-
ed
other-
wise
than by
way of
sale.

“6A. (1) Where any dealer claims that he is not liable to pay tax under this Act, in respect of any goods, on the ground that the movement of such goods from one State to another was occasioned by reason of transfer of such goods by him to any other place of his business or to his agent or principal, as the case may be, and not by reason of sale, the burden of proving that the movement of those goods was so occasioned shall be on that dealer and for this purpose he may produce before the prescribed authority, within the prescribed time, a declaration, duly filled and signed by the principal officer of the other place of business, or his agent or principal, as the case may be, containing the prescribed particulars in the prescribed form obtained from the prescribed authority, along with the evidence of despatch of such goods.

(2) If the prescribed authority is satisfied after such enquiry as he may deem necessary that the particulars contained in the declara-

tion are true, he shall make an order to that effect and thereupon the movement of goods to which the declaration relates shall be deemed for the purposes of this Act to have been occasioned otherwise than as a result of sale."

4. In section 7 of the principal Act,—

Amend-
ment of
section 7.

(a) after sub-section (2), the following sub-section shall be inserted, namely:—

"(2A) Where it appears necessary to the authority to whom an application is made under sub-section (1) or sub-section (2) so to do for the proper realisation of the tax payable under this Act or for the proper custody and use of the forms referred to in clause (a) of the first proviso to sub-section (2) of section 6 or sub-section (1) of section 6A or clause (a) of sub-section (4) of section 8, he may, by an order in writing and for reasons to be recorded therein, impose as a condition for the issue of a certificate of registration a requirement that the dealer shall furnish in the prescribed manner and within such time as may be specified in the order such security as may be so specified, for all or any of the aforesaid purposes.";

(b) in sub-section (3), after the words "rules made thereunder", the words, brackets, figure and letter "and the condition, if any, imposed under sub-section (2A), has been complied with" shall be inserted;

(c) after sub-section (3), the following sub-sections shall be inserted, namely:—

"(3A) Where it appears necessary to the authority granting a certificate of registration under this section so to do for the proper realisation of tax payable under this Act or for the proper custody and use of the forms referred to in sub-section (2A), he may, at any time while such certificate is in force, by an order in writing and for reasons to be recorded therein, require the dealer, to whom the certificate has been granted, to furnish within such time as may be specified in the order and in the prescribed manner such security, or, if the dealer has already furnished any security in pursuance of an order under this sub-section or sub-section (2A), such additional security, as may be specified in the order, for all or any of the aforesaid purposes.

(3B) No dealer shall be required to furnish any security under sub-section (2A) or sub-section (3A), unless he has been given an opportunity of being heard and the amount of security that may be demanded from any dealer under either or both of the aforesaid sub-sections shall be reasonable having regard to all the circumstances of the case and shall not in the aggregate exceed fifty thousand rupees.

(3C) Where the security furnished by a dealer under sub-section (2A) or sub-section (3A) is in the form of a surety bond and the surety becomes insolvent or dies, the dealer shall, within fifteen days of the occurrence of any of the aforesaid events, inform the authority granting the certificate of registration and shall within thirty days of such occurrence furnish a fresh surety bond or furnish in the prescribed manner other security for the amount of the bond.

(3D) The authority granting the certificate of registration may by order and for good and sufficient cause forfeit the whole or any part of the security furnished by a dealer,—

(a) for realising any amount of tax or penalty payable by the dealer;

(b) if the dealer is found to have misused any of the forms referred to in sub-section (2A) or to have failed to keep them in proper custody:

Provided that no order shall be passed under this sub-section without giving the dealer an opportunity of being heard.

(3E) Where by reason of an order under sub-section (3D), the security furnished by any dealer is rendered insufficient, he shall make up the deficiency in such manner and within such time as may be prescribed.

(3F) The authority issuing the forms referred to in sub-section (2A) may refuse to issue such forms to a dealer who has failed to comply with an order under that sub-section or sub-section (3A), or with the provisions of sub-section (3C) or sub-section (3E), until the dealer has complied with such order or such provisions, as the case may be.

(3G) The authority granting a certificate of registration may, on application by the dealer to whom it has been granted, order the refund of any amount or part thereof deposited by the dealer by way of security under this section, if it is not required for the purposes of this Act.”;

(d) in sub-section (4), in clause (b), for the words “or has ceased to exist”, the words, brackets, figures and letters “or has ceased to exist or has failed without sufficient cause, to comply with an order under sub-section (3A) or with the provisions of sub-section (3C) or sub-section (3E) or has failed to pay any tax or penalty payable under this Act” shall be substituted.

Amend-
ment of
section 8.

5. In section 8 of the principal Act,—

(a) for sub-section (2A), the following sub-section shall be substituted, namely:—

“(2A) Notwithstanding anything contained in sub-section (1A) of section 6 or sub-section (1) or sub-section (2) of this section, the tax payable under this Act by a dealer on his turnover in so far as the turnover or any part thereof relates to the sale of any goods, the sale or, as the case may be, the purchase of which is, under the sales tax law of the appropriate State, exempt from tax generally or subject to tax generally at a rate which is lower than three per cent. (whether called a tax or fee or by any other name), shall be nil or, as the case may be, shall be calculated at the lower rate.

Explanation.—For the purposes of this sub-section a sale or purchase of any goods shall not be deemed to be exempt from tax generally under the sales tax law of the appropriate State if under that law the sale or purchase of such goods is exempt only

in specified circumstances or under specified conditions or the tax is levied on the sale or purchase of such goods at specified stages or otherwise than with reference to the turnover of the goods.”;

(b) in sub-section (4), the following proviso shall be inserted at the end, namely:—

“Provided that the declaration referred to in clause (a) is furnished within the prescribed time.”;

(c) for sub-section (5), the following sub-section shall be substituted, namely:—

“(5) Notwithstanding anything contained in this section, the State Government may, if it is satisfied that it is necessary so to do in the public interest, by notification in the Official Gazette, and subject to such conditions as may be specified therein, direct,—

(a) that no tax under this Act shall be payable by any dealer having his place of business in the State in respect of the sales by him, in the course of inter-State trade or commerce, from any such place of business of any such goods or classes of goods as may be specified in the notification, or that the tax on such sales shall be calculated at such lower rates than those specified in sub-section (1) or sub-section (2) as may be mentioned in the notification;

(b) that in respect of all sales of goods or sales of such classes of goods as may be specified in the notification, which are made, in the course of inter-State trade or commerce, by any dealer having his place of business in the State or by any class of such dealers as may be specified in the notification to any person or to such class of persons as may be specified in the notification, no tax under this Act shall be payable or the tax on such sales shall be calculated at such lower rates than those specified in sub-section (1) or sub-section (2) as may be mentioned in the notification.”.

6. In section 9 of the principal Act, in sub-section (2), for the words “refunds, penalties,” the words “refunds, rebates, penalties,” shall be substituted. Amendment of section 9.

7. After section 9A of the principal Act, the following section shall be inserted, namely:— Insertion of new section 9B.

“9B. The amount of tax, interest, penalty, fine or any other sum payable, and the amount of refund due, under the provisions of this Act shall be rounded off to the nearest rupee and, for this purpose, where such amount contains a part of a rupee consisting of paise, then, if such part is fifty paise or more, it shall be increased to one rupee and if such part is less than fifty paise, it shall be ignored: Rounding off of tax, etc.

Provided that nothing in this section shall apply for the purpose of collection by a dealer of any amount by way of tax under this Act in respect of any sale by him of goods in the course of inter-State trade or commerce.”.

Amend-
ment of
section 10,

8. In section 10 of the principal Act,—

(a) for clause (a), the following clauses shall be substituted, namely:—

“(a) furnishes a certificate or declaration under sub-section (2) of section 6 or sub-section (1) of section 6A or sub-section (4) of section 8, which he knows, or has reason to believe, to be false; or

(aa) fails to get himself registered as required by section 7, or fails to comply with an order under sub-section (3A) or with the requirements of sub-section (3C) or sub-section (3E), of that section;”;

(b) in clause (d), for the word, brackets and letter “clause (b)”, the words, brackets and letters “clause (b) or clause (c) or clause (d)” shall be substituted.

Amend-
ment of
section
10A.

9. In section 10A of the principal Act, in sub-section (1), for the words “the tax which would have been levied under this Act in respect of the sale to him of the goods if the offence had not been committed”, the words, brackets and figures “the tax which would have been levied under sub-section (2) of section 8 in respect of the sale to him of the goods, if the sale had been a sale falling within that sub-section” shall be substituted.

Amend-
ment of
section
13.

10. In section 13 of the principal Act,—

(a) in sub-section (1),—

(i) in clause (b), after the words “the deductions which may be made”, the words, brackets, letters and figures “under clause (c) of sub-section (1) of section 8A” shall be inserted;

(ii) in clause (d), the words “and the State of origin of such form or certificate” shall be inserted at the end;

(b) for sub-section (2), the following sub-section shall be substituted, namely:—

“(2) Every rule made by the Central Government under sub-section (1) shall be laid as soon as may be after it is made, before each House of Parliament while it is in session for a total period of thirty days which may be comprised in one session or in two successive sessions, and if, before the expiry of the session in which it is so laid or the session immediately following, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.”;

(c) in sub-section (4),—

(i) after clause (a), the following clause shall be inserted, namely:—

“(aa) the manner in which security may be furnished

under sub-section (2A) or sub-section (3A) or sub-section (3C) of section 7 and the manner in which and the time within which any deficiency may be made up under sub-section (3E) of that section;"

(ii) for clause (e), the following clause shall be substituted, namely:—

"(e) the authority from whom, the conditions subject to which and the fees subject to payment of which any form of certificate prescribed under clause (a) of the first proviso to sub-section (2) of section 6 or of declaration prescribed under sub-section (1) of section 6A or sub-section (4) of section 8 may be obtained, the manner in which such forms shall be kept in custody and records relating thereto maintained, the manner in which any such form may be used and any such certificate or declaration may be furnished and the time within which any such certificate or declaration shall be produced or furnished;"

(d) in sub-section (5), for the words "the State Government", the words "the Central Government or, as the case may be, the State Government" shall be substituted.

11. In section 14 of the principal Act,—

Amend-
ment of
section 14.

(a) for clause (i), the following clause shall be, and shall be deemed always to have been, substituted, namely:—

"(i) coal, including coke in all its forms, but excluding charcoal;"

(b) for clause (iv), the following clause shall be substituted, namely:—

"(iv) iron and steel, that is to say,—

(i) pig iron and cast iron including ingot moulds, bottom plates, runner scrap and iron skull scrap;

(ii) steel semis (ingots, slabs, blooms and billets of all qualities, shapes and sizes);

(iii) skelp bars, tin bars, sheet bars, hoe-bars and sleeper bars;

(iv) steel bars (rounds, rods, squares, flats, octagons and hexagons, plain and ribbed or twisted, in coil form as well as straight lengths);

(v) steel structurals (angles, joists, channels, tees, sheet piling sections, Z sections or any other rolled sections);

(vi) sheets, hoops, strips and skelp, both black and galvanised, hot and cold rolled, plain and corrugated, in all qualities, in straight lengths and in coil form, as rolled and in rivetted condition;

(vii) plates both plain and chequered in all qualities;

(viii) discs, rings, forgings and steel castings;

(ix) tool, alloy and special steels of any of the above categories;

(x) steel melting scrap in all forms including steel skull, turnings and borings;

(xi) steel tubes, both welded and seamless, of all diameters and lengths, including tube fittings;

(xii) tin-plates, both hot dipped and electrolytic and tinfoil plates;

(xiii) fish plate bars, bearing plate bars, crossing sleeper bars, fish plates, bearing plates, crossing sleepers and pressed steel sleepers, rails—heavy and light crane rails;

(xiv) wheels, tyres, axles and wheel sets;

(xv) wire rods and wires—rolled, drawn, galvanised, aluminised, tinned or coated such as by copper;

(xvi) defectives, rejects, cuttings or end pieces of any of the above categories;”;

(c) for clause (v), the following clause shall be substituted, namely:—

“(v) jute, that is to say, the fibre extracted from plants belonging to the species *Corchorus capsularis* and *corchorus olitorius* and the fibre known as mesta or bimli extracted from plants of the species *Hibiscus cannabinus* and *Hibiscus sabdariffa*—*Var altissima* and the fibre known as Sunn or Sunnhemp extracted from plants of the species *Crotalaria juncea* whether baled or otherwise;”;

(d) for clause (vi), the following clause shall be substituted, namely:—

“(vi) Oilseeds, that is to say,—

(i) Groundnut or Peanut (*Arachis hypogaea*);

(ii) Sesamum or Til (*Sesamum orientale*);

(iii) Cotton seed (*Gossypium* Spp.);

(iv) Soyabean (*Glycine soja*);

(v) Rapeseed and Mustard—

(1) Toria (*Brassica campestris var toria*);

(2) Rai (*Brassica juncea*);

(3) Jamba—Taramira (*Eruca Satiya*);

(4) Sarson, yellow and brown (*Brassica campestris var sarson*);

(5) Banarsi Rai or True Mustard (*Brassica nigra*);

(vi) Linseed (*Linum usitatissimum*);

(vii) Castor (*Ricinus communis*);

(viii) Coconut (i.e. Copra excluding tender coconuts) (*Cocos nucifera*);

(ix) Sunflower (*Helianthus annuus*);

(x) Niger seed (*Guizotia abyssinica*);

(xi) Neem, vepa (*Azadirachta indica*);

(xii) Mahua, illupai, Ippe (*Madhuca indica* M. *Latifolia*, *Bassia*, *Latifolia* and *Madhuca longifolia* syn. *M. Longifolia*);

(xiii) Karanja, Pongam, Honga (*Pongamia pinnata* syn. *P. Glabra*);

(xiv) Kusum (*Schleichera oleosa*, syn. *S. Trijuga*);

(xv) Punna, Undi (*Calophyllum inophyllum*);

(xvi) Kokum (*Carcinia indica*);

(xvii) Sal (*Shorea robusta*);

(xviii) Tung (*Aleurites fordii* and *A. montana*);

(xix) Red palm (*Elaeis guinensis*);

(xx) Safflower (*Carthamus tinctorius*);".

12. In section 15 of the principal Act, in clause (b),—

(a) for the words "the tax so levied", the words "and tax has been paid under this Act in respect of the sale of such goods in the course of inter-State trade or commerce, the tax levied under such law" shall be, and shall be deemed to have been, substituted, with effect from the 1st day of October, 1958;

Amend-
ment of
section
15.

(b) for the words "shall be refunded to such person", the words "shall be reimbursed to the person making such sale in the course of inter-State trade or commerce" shall be substituted.

13. In the principal Act, after Chapter IV, the following Chapter shall be inserted, namely:—

'CHAPTER V

LIABILITY IN SPECIAL CASES

In-
sertion
of new
Chapter
V.

16. In this Chapter,—

(a) "appropriate authority", in relation to a company, means the authority competent to assess tax on the company;

Defini-
tions.

(b) "company" and "private company" have the meanings respectively assigned to them by clauses (i) and (iii) of sub-section (1) of section 3 of the Companies Act, 1956.

1 of 1956.

17. (1) Every person—

(a) who is the liquidator of any company which is being wound up, whether under the orders of a court or otherwise; or

Com-
pany in
liqui-
dation.

(b) who has been appointed the receiver of any assets of a company,

(hereinafter referred to as the liquidator) shall, within thirty days after he has become such liquidator, give notice of his appointment as such to the appropriate authority.

(2) The appropriate authority shall, after making such inquiry or calling for such information as it may deem fit, notify to the liquidator within three months from the date on which he receives notice of the appointment of the liquidator the amount which, in the opinion of the appropriate authority would be sufficient to provide for any tax which is then, or is likely thereafter to become, payable by the company.

(3) The liquidator shall not part with any of the assets of the company or the properties in his hands until he has been notified by the appropriate authority under sub-section (2) and on being so notified, shall set aside an amount equal to the amount notified and, until he so sets aside such amount, shall not part with any of the assets of the company or the properties in his hands:

Provided that nothing contained in this sub-section shall debar the liquidator from parting with such assets or properties for the purpose of the payment of the tax payable by the company under this Act or for making any payment to secured creditors whose debts are entitled under law to priority of payment over debts due to Government on the date of liquidation or for meeting such costs and expenses of the winding up of the company as are in the opinion of the appropriate authority reasonable.

(4) If the liquidator fails to give the notice in accordance with sub-section (1) or fails to set aside the amount as required by, or parts with any of the assets of the company or the properties in his hands in contravention of the provisions of sub-section (3), he shall be personally liable for the payment of the tax which the company would be liable to pay:

Provided that if the amount of any tax payable by the company is notified under sub-section (2), the personal liability of the liquidator under this sub-section shall be to the extent of such amount.

(5) Where there are more liquidators than one, the obligations and liabilities attached to the liquidator under this section shall attach to all the liquidators jointly and severally.

(6) The provisions of this section shall have effect notwithstanding anything to the contrary contained in any other law for the time being in force.

18. Notwithstanding anything contained in the Companies Act, 1956, when any private company is wound up after the commencement of this Act, and any tax assessed on the company under this Act for any period, whether before or in the course of or after its liquidation, in respect of any previous year cannot be recovered, then, every person who was a director of the private company at any time during the relevant previous year shall be jointly and severally liable for the payment of such tax unless he proves that the non-recovery cannot be attributed to any gross neglect, misfeasance or breach of duty on his part in relation to the affairs of the company.

Liability
of directors of
private company in
liquidation.

1 of 1956.

14. The principal Act, as amended by this Act, is hereby extended to, and shall be in force in, the Kohima and Mokokchung districts in the State of Nagaland.

Extension of the principal Act to Kohima and Mokokchung districts in the State of Nagaland.

15. (1) Notwithstanding anything contained in any judgment, decree or order of any court or other authority to the contrary, any assessment, re-assessment, levy or collection of any tax made or purporting to have been made, any action or thing taken or done in relation to such assessment, re-assessment, levy or collection under the provisions of the principal Act before the commencement of this Act shall be deemed to be as valid and effective as if such assessment, re-assessment, levy or collection or action or thing had been made, taken or done under the principal Act as amended by clause (a) of section 11 and clause (a) of section 12 of this Act, and accordingly—

Validation of assessments, etc.

(a) all acts, proceedings or things done or action taken by the State Government or by any other officer of the State Government or by any other authority in connection with the assessment, re-assessment, levy or collection of such tax shall, for all purposes, be deemed to be and to have always been done or taken in accordance with law;

(b) no suit or other proceedings shall be maintained or continued in any court or before any authority for the refund of any such tax; and

(c) no court shall enforce any decree or order directing the refund of any such tax.

(2) For the removal of doubts, it is hereby declared that nothing in sub-section (1) shall be construed as preventing any person—

(a) from questioning in accordance with the provisions of the principal Act, as amended by this Act, the assessment, re-assessment, levy or collection of such tax for any period, or

(b) from claiming refund of any tax paid by him in excess of the amount due from him under the principal Act as amended by this Act.

STATEMENT OF OBJECTS AND REASONS

The levy of tax on inter-State sales under the Central Sales Tax Act, 1956, commenced from the 1st July, 1957. Experience of the working of the Act has shown that it requires to be amended in certain respects for dealing with the problems of evasion of tax, realisation of tax in the event of liquidation of a company and for spelling out the intention underlying certain provisions more clearly so as to overcome or avoid interpretations to the contrary.

2. The Bill seeks to make the following important amendments in the Act:—

(i) Exemption from Central sales tax on inter-State sales of electrical energy is now dependent on the exemption from tax by a State Government on local sales of electrical energy. It is now proposed to provide specifically that inter-State sale of electrical energy would not be liable to Central sales tax.

(ii) Central sales tax is not leviable in respect of transactions of transfer of goods from a head office or a principal to a branch or an agent or *vice versa* as these do not amount to sales. This aids evasion in that dealers try to show even genuine sales to third parties as transactions of this type. Accordingly, it is proposed to provide that the burden of proving that the transfer of goods in such cases is otherwise than by way of sale shall lie on the dealer who claims exemption from tax on the ground that there was in fact no sale.

(iii) In order to deal effectively with tax evaders, provision is sought to be made for demand, in appropriate cases, of security or additional security not exceeding Rs. 50,000 for initial registration or for continuance of registration. It is also proposed to make the penalty provisions more stringent.

(iv) Provision is being made for rounding off to the nearest rupee of any tax, interest, penalty or fine payable by a dealer under the Act.

(v) Section 14 of the Act which declares certain goods as of special importance in inter-State trade or commerce is sought to be amended as under:—

(a) The Supreme Court has ruled that the existing definition of "coal" includes "charcoal". Coal was included as one of the goods of special importance with a view to covering only that "coal" which is used mostly as an industrial fuel and not "charcoal". The definition is, therefore, sought to be amended retrospectively to exclude "charcoal".

(b) The definitions of "iron and steel" and "oilseeds", given in the section, have led to varying interpretations by assessing

authorities and the courts. The existing definitions are, therefore, sought to be replaced by specific lists of iron and steel items and oilseeds in order to avoid any ambiguity in this respect. The definition of "jute" is also being substituted by a more precise definition.

(vi) Clause (b) of section 15 which provides for refund to such person as may be prescribed by rules of local sales tax on goods declared to be of special importance in inter-State trade or commerce, is being amended retrospectively to make it clear that the local sales tax can be reimbursed only when tax on the inter-State sale has been paid and not otherwise.

By another amendment (which will have prospective effect) to the same clause it is being provided that the local sales tax on such goods will be reimbursable to the person making a sale of such goods in the course of inter-State trade or commerce.

(vii) A new Chapter is sought to be added to provide for collection of tax in the event of liquidation of a company.

(viii) The Bill also makes necessary provision for validation of past levies.

3. Opportunity is being taken to extend the principal Act to Kohima and Mokokchung Districts of Nagaland.

4. The Bill seeks to achieve the above objects.

NEW DELHI;

K. R. GANESH.

The 24th July, 1971.

PRESIDENT'S RECOMMENDATION UNDER ARTICLES 117 AND 274 OF THE CONSTITUTION OF INDIA

[Copy of letter No. 28/11/71-ST-II, dated the 27th July, 1971 from Shri K. R. Ganesh, Minister of State in the Ministry of Finance to the Secretary, Lok Sabha.]

The President having been informed of the subject matter of the proposed Bill, recommends under clauses (1) and (3) of article 117 read with clause (1) of article 274 of the Constitution of India, the introduction of the Bill further to amend the Central Sales Tax Act, 1956 in the Lok Sabha and also recommends to the Lok Sabha the consideration of the Bill.

Notes on clauses

Clause 2.—Sub-clause (a) of this clause seeks to provide that inter-State sales of electrical energy will not be liable to Central sales tax.

Sub-clause (b) seeks to substitute a new sub-section for existing sub-section (2) of section 6. Under the existing sub-section, all inter-State sales of the same goods subsequent to the first of such sales effected during the same movement of goods are exempt from tax if such subsequent sales are made to registered dealers. The new sub-section seeks to provide for a similar exemption from tax in respect of such subsequent sales to Government also.

Clause 3.—This clause seeks to insert a new section 6A in the principal Act for the purpose of providing that the burden of proving that any movement of goods from one State to another was occasioned otherwise than by way of sale shall be on the dealer making such claim. For the purpose of discharging this burden, the dealer may produce a declaration in the prescribed form from the person in the other State to whom the goods have been sent along with evidence of such despatch of goods.

Clause 4.—This clause seeks to amend section 7 of the principal Act to empower the registering authority to demand, in appropriate cases, security or additional security up to an amount or amounts not exceeding in the aggregate fifty thousand rupees, for initial registration or for continuance of registration. The clause also makes the necessary ancillary and consequential provisions in regard to the form in which the security may be furnished or replenished, the forfeiture of security, etc.

Clause 5.—Sub-clause (a) of this clause seeks to substitute a new sub-section for existing sub-section (2A) of section 8 of the principal Act. The new sub-section seeks to bring out more clearly that an exemption or lower rate of levy under the local sales tax law of the appropriate State would be available in respect of an inter-State sale of goods only if such exemption or lower levy is available generally with reference to such goods or such class of goods under the local sales tax law.

Sub-clause (b) seeks to amend sub-section (4) of section 8 of the principal Act for the purpose of empowering the State Government to prescribe the time within which the declarations prescribed under the sub-section have to be furnished.

Sub-clause (c) seeks to substitute a new sub-section for existing sub-section (5) of section 8 of the principal Act. Under the existing sub-section, State Governments may grant exemption from tax or reduction in rate of tax with reference to any goods or classes of goods only. The new sub-section seeks to provide for such exemptions or reductions being granted with reference to persons also.

Clause 6.—This clause seeks to amend sub-section (2) of section 9 of the principal Act for providing expressly that the provisions relating to rebates in the general sales tax law of the appropriate State would also apply for the grant of rebates under the principal Act.

Clause 7.—This clause seeks to provide for rounding off to the nearest rupee of the amount of tax, interest, penalty or fine payable by a dealer under the Act.

Clause 8.—This clause seeks to amend section 10 of the principal Act to provide for penalties in respect of the various matters specified therein.

Clause 9.—The clause seeks to amend sub-section (1) of section 10A of the principal Act which provides for imposition of penalty in lieu of prosecution for certain offences. At present the maximum penalty which may be levied in respect of any offence is an amount equivalent to one and a half times the tax which would have been levied in respect of the sale of goods to which the offence relates. The amendment seeks to provide that the maximum penalty shall be computed in the case of every offence with reference to the higher rates of tax applicable under sub-section (2) of section 8 as if the sale to which the offence relates were a sale under that sub-section.

Clause 10.—This clause seeks to amend section 13 of the principal Act which deals with the rule-making powers of the Central and State Governments. The amendments proposed by this clause are mainly of a consequential or formal nature.

Clause 11.—Sub-clause (a) seeks to exclude, with retrospective effect, charcoal from the definition of “coal” contained in clause (i) of section 14 of the principal Act.

Sub-clause (b) seeks to substitute clause (iv) of section 14 of the principal Act by a new clause for the purpose of enumerating expressly the various sub-items falling under the item “Iron and Steel”.

Sub-clause (c) seeks to substitute the definition of the term “jute” by a more precise definition.

Sub-clause (d) seeks to substitute clause (vi) of section 14 of the principal Act for enumerating expressly the various types of oilseeds.

Clause 12.—Sub-clause (a) of this clause seeks to amend with retrospective effect from the 1st October, 1958, clause (b) of section 15 of the principal Act so as to make it clear that local sales tax on goods declared to be of special importance in inter-State trade or commerce would be reimbursable only when the tax on the inter-State sale of such goods has been paid.

Sub-clause (b) seeks to make it clear that local sales tax would be reimbursed to the person making a sale in the course of inter-State trade or commerce.

Clause 13.—This clause seeks to insert a new Chapter V in the principal Act to provide for collection of tax in the event of liquidation of a company.

Clause 14.—This clause seeks to extend the principal Act to Kohima and Mokokchung Districts in the State of Nagaland.

Clause 15.—This clause seeks to make the necessary validating provision.

FINANCIAL MEMORANDUM

The Central Sales Tax Act, 1956, utilises the machinery in existence in States and Union territories for collection of tax. Thus no expenditure out of the Consolidated Fund of India is involved in the collection of Central sales tax in States.

Sub-clause (b) of clause 2 of the Bill seeks to substitute a new sub-section for sub-section (2) of section 6 of the principal Act. The first proviso to the new sub-section provides that for the purpose of claiming exemption from tax on subsequent sales dealers have to furnish certificates in the prescribed form.

Clause 3 of the Bill seeks to insert a new section 6A in the principal Act. Sub-section (1) of the new section provides *inter alia* that for the purpose of proving that the movement of goods from one State to another effected by a dealer was occasioned otherwise than by way of sale, the dealer may furnish a declaration in the prescribed form.

The printing of the aforesaid forms for meeting the requirements in Union territories, will involve an expenditure of a recurring nature which is not likely to exceed Rs. 10,000 per annum.

The Bill does not involve any non-recurring expenditure.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Certain provisions of the Bill confer rule-making powers on Central and State Governments.

The first proviso to new sub-section (2) of section 6 [*vide* sub-clause (b) of clause 2 of the Bill] provides for furnishing of certain forms for claiming exemption from tax on subsequent inter-State sales referred to in that proviso. New section 6A (*vide* clause 3 of the Bill) provides for the filing of a declaration by a dealer claiming that the movement of any goods has been occasioned otherwise than by way of sale. The aforesaid new sub-section (2) of section 6 and new section 6A read with new clause (e) of sub-section (4) of section 13 [*vide* clause 10(c) (ii) of the Bill] empower the State Government to prescribe by rules the form of, and the particulars which should be contained in, the said certificates and declarations; the authority from whom, the conditions subject to which and the fees subject to the payment of which the said forms may be obtained; the manner in which the said forms shall be kept in custody and records relating thereto maintained and the manner in which such forms may be used and the certificates and declarations in such forms may be furnished and the time within which such certificates and declarations shall be furnished, etc.

Clause 4 of the Bill seeks to amend section 7 of the principal Act for authorising the registering authority to demand security or additional security for initial registration or for continuance of registration. This clause read with clause 10(c) (i) of the Bill authorises the State Government to prescribe by rules the manner in which the security or the additional security shall be furnished and the manner in which and the time within which any security which has become insufficient shall be replenished.

Clause 5(b) of the Bill seeks to amend sub-section (4) of section 8 of the principal Act to enable rules being made for prescribing also the time within which the declarations referred to in that sub-section should be furnished by dealers. The power to make such rules is exercisable by the State Government [*vide* clause 10(c) (ii)].

Clause 10 of the Bill spells out the Government (Central or State) by which rules in respect of the matters mentioned above may be made. The clause also provides for rules being made by the Central Government for prescribing the appropriate State of origin of the forms to be used for the various declarations or certificates under the Act [*vide* clause 10(a) (ii)], and also for prescribing the penalties for contravention of rules made by that Government [*vide* clause 10(d)].

All the aforesaid provisions under which rules may be made by the Central Government or, as the case may be, State Government, except the provision empowering the Central Government to provide for penalties for contravention of rules made by it, pertain essentially to matters of

administrative detail and procedure and, therefore, the delegation of legislative power is of a normal character. The provision [clause 10(d) of the Bill] empowering the Central Government to prescribe penalties for contravention of rules made by it is also of a normal character because the maximum limit of any such penalty (fine which may extend to five hundred rupees and in the case of a continued offence, a daily fine which may extend to fifty rupees for every day during which the offence continues) have been spelt out. Further, under sub-section (5) of section 13 of the principal Act, a similar power has already been conferred on State Governments.

2. Sub-clause (c) of clause 5 of the Bill seeks to substitute a new sub-section for existing sub-section (5) of section 8 of the principal Act for the purpose of enabling State Governments to grant exemptions from tax or reductions in rate of tax not only with reference to any goods or classes of goods as at present but also with reference to persons. The exemption from tax or reduction in rate of tax may be granted only if the State Government is satisfied that it is necessary so to do in the public interest. As it is not possible to visualise in advance the cases in which such exemptions or reductions may be necessary and as the exemptions or reductions can be granted only in public interest, the delegation of power to grant exemptions or reductions is of a normal character.

BILL No. 103 OF 1971

A Bill to consolidate and amend the law relating to the salaries and allowances of Ministers.

Be it enacted by Parliament in the Twenty-second Year of the Republic of India as follows:—

1. (1) This Act may be called the Salaries and Allowances of Ministers Act, 1971. Short title
and com-
mence-
ment.

(2) It shall come into force from the 1st day of April, 1972.

2. In this Act, "Minister" means a member of the Council of Ministers, by whatever name called, and includes a Deputy Minister. Definition.

3. (1) There shall be paid to each Minister, other than a Deputy Minister, a salary of thirty-seven thousand and five hundred rupees per mensem, and to each Deputy Minister a salary of sixteen thousand, two hundred and fifty rupees per mensem. Salaries
of
Ministers

(2) Notwithstanding anything to the contrary contained in any other law for the time being in force, the whole of the salary paid as aforesaid to a Minister or Deputy Minister shall be included in his total income under the head "Salary" for purposes of being charged to income-tax under the Income-tax Act, 1961.

43 of 1961.

Residence
of
Ministers.

4. (1) Each Minister shall be entitled to the use of and shall reside in an official furnished residence throughout his term of office and he shall pay in respect thereof the following charges, that is to say—

Particulars of charges	In respect of	
	A Minister	A Deputy Minister
	Charge (Rupees per mensem)	Charge (Rupees per mensem)
i. Rent, Rates & Taxes, and Decoration, Maintenance & Repairs of the premises, consisting of a fully furnished residence (equipped with all necessary appliances and a telephone) together with staff quarters and other buildings appurtenant thereto and the gardens thereof :	2,200	1,600
ii. Salaries and Allowances of gardeners, watchmen and sweeper	500	500
iii. Electricity, Water and Telephone	300	300

(2) On the relinquishment of office by a Minister, whether by resignation, retirement or otherwise, he shall be entitled to continue to have the use of the furnished residence for a period of one month immediately after such relinquishment, free of rent and all other charges.

(3) In the event of the death of a Minister, his family shall be entitled to continue to have the use of the furnished residence occupied by the Minister for a period of two months immediately after his death, free of rent and all other charges.

Sumptuary
Allowance.

5. No sumptuary allowance or any other allowance of the nature of entertainment allowance shall be granted to any Minister other than the Prime Minister who shall be paid such allowance as may be provided under the rules made in this behalf by the Central Government.

Travelling
and Daily
Allowances

6. (1) Subject to any rules made in this behalf by the Central Government, a Minister shall be entitled to—

(a) travelling allowances for himself and the members of his family and for the transport of his and his family's effects—

(i) in respect of the journey to Delhi from his usual place of residence outside Delhi for assuming office; and

(ii) in respect of the journey from Delhi to his usual place of residence outside Delhi on relinquishing office; and

(b) travelling and daily allowances in respect of tours undertaken by him in the discharge of his official duties, whether by sea, land or air.

(2) Any travelling allowance payable under this section shall be paid by a crossed cheque drawn on a bank or free official transport may be provided in lieu thereof.

(3) There shall be deducted from every Minister's salary the sum of six hundred rupees per mensem to recover the cost of travelling undertaken by him during the year for private, personal and political purposes and included in the travelling allowance paid to him as aforesaid and for private and personal use of official transport.

7. Subject to any rules made in this behalf by the Central Government, a Minister and the members of his family shall be entitled free of charge to accommodation in hospitals maintained by the Government and also to medical treatment.

Medical treatment etc.

8. There may be paid to any Minister by way of a repayable advance such sum of money as may be determined by rules made in this behalf for the purchase of a motor car in order that he may be able to discharge conveniently and efficiently the duties of his office, provided however that such advance shall bear interest at ten per cent per annum.

Advance to Ministers for purchase of Motor Cars.

9. No person in receipt of a salary or allowance under this Act shall be entitled to receive any sum out of funds provided by Parliament by way of salary or allowance in respect of his membership of either House of Parliament.

Ministers not to draw salary or allowances as Members of Parliament.

10. The date on which any person became or ceased to be a Minister shall be published in the Official Gazette, and any such notification shall be conclusive evidence of the fact that he became, or ceased to be, a Minister on that date for all the purposes of this Act.

Notification respecting date of appointment etc. of Ministers.

11. (1) The Central Government may, by notification in the Official Gazette, make rules for carrying out the purposes of this Act.

Power to make rules.

(2) All rules made under this Act shall be laid before both Houses of Parliament as soon as may be after they are made.

12. The Salaries and Allowances of Ministers Act, 1952 is hereby repealed.

Repeal of Act LVIII of 1952.

STATEMENT OF OBJECTS AND REASONS

The main object of this Bill is to make clear to the public the true extent of the over-all emoluments now being received by the Council of Ministers of the Central Government, and to indicate to the tax-payers in particular the true cost thereof.

It therefore, seeks, firstly, to evaluate in money terms the various benefits, perquisites and amenities which the Ministers presently enjoy free of all taxes; and secondly, to *enhance* their gross salaries to an adequate level, so that—

- (a) the *net salary* of the Ministers *after tax* may be such that there may be enough left over with them to pay for all the benefits, perquisites and amenities on the scale at which they presently enjoy them (without any payment and *free of tax*); and
- (b) the balance then left over with them, i.e., their “take-home” pay after making all payments both for taxes and for perquisites etc., should be not less than their present net “take-home” emoluments.

It is not intended to make, nor does the Bill in fact make, any substantial change, whether by way of increase or decrease, in the money value of the present aggregate real emoluments of the Ministers (inclusive of allowances, benefits, perquisites and amenities).

NEW DELHI;

H. M. PATEL

The 16th June, 1971.

NOTES ON CLAUSES

Long Title:

The Bill seeks to consolidate (and also to amend and supplement) the law relating to the Salaries & Allowances of Ministers, at present contained in Act LVIII of 1952 as amended by Act 47 of 1969.

Clause 1:

Seeks to bring the new Act into effect from 1st April, 1971, so as to allow a short period of transition.

Clause 2:

Repeats the "Definition" of Minister contained in Act LVIII of 1952.

Clause 3:

Seeks to refix the salaries of Ministers and Deputy Ministers at such level that:

- (a) after payment by them of the full income-tax and surcharge thereon at the rates now in force for deduction of tax from salaries, and
- (b) after payment by them for the various perquisites, benefits and amenities as set out in Clauses 4(i) and 6(iii) of the Bill,—

they may receive virtually the same (in fact very slightly more), net "take-home" emoluments (inclusive of Sumptuary Allowance as regards all Ministers other than Deputy Ministers), as they would now.

Table of Comparative Annual Emoluments
(At present and As Proposed)

	Minister		Deputy Minister	
	Present	Proposed	Present	Proposed
	Rs.	Rs.	Rs.	Rs.
1. Salary	27,000	450,000	21,000	195,000
2. Sumptuary Allowance	6,000*	nil	nil	nil
	33,000	450,000	21,000	195,000
Less : Tax	5,280	378,950	3,080	140,800
3. Balance	27,720	71,050	17,920	54,200
<i>Less : Deductions for</i>				
Rent	nil	26,400	nil	19,200
Staff salaries	nil	16,000	nil	6,000
Electricity, Water and Telephone	nil	3,600	nil	3,600
Travel & Transport	nil	7,200	nil	7,200
4. Total Deductions	nil	43,200	nil	36,000
5. Net "Take-Home" Emoluments	27,720	27,850	17,920	18,200

*Tax Free.

Clause 4:

Sub-clause (1) seeks to specify the perquisites, benefits and amenities to be provided to the Ministers *on payment* by them at the scale there prescribed. Particulars of these have been ascertained from the following official sources:

Answers to various "Starred" and "Unstarred Questions" and various "Papers laid on the Table" concerning these matters in the Lok Sabha and Rajya Sabha in 1963, 1969 and 1970 (upto August).

The money values of the perquisites, benefits and amenities have been conservatively estimated, at considerably less than their market values, so as to cause no hardship.

Sub-clauses (2) and (3) provide that no payment for any perquisite etc., need be made for a period of one month following the relinquishment of his office by a Minister and for a period of two months following the death of a Minister.

Clause 5:

Seeks to prohibit the payment of any "sumptuary" or other allowance of the nature of "entertainment" allowance to any Minister, other than the Prime Minister. However, in fixing the *gross* salary of all Ministers (other than Deputy Ministers, but including the Prime Minister) care has been taken to ensure that their net emoluments (after tax and after payment for perquisites, benefits and amenities) shall enable them to incur expenditure upto Rs. 6,000 p. a. on entertainment.

Clause 6:

Sub-clause (3) seeks to require every Minister to pay Rs. 7,200/- p.a. for that portion of his "official travelling" which is deemed to be reasonably attributable to personal, political and private purposes, and for the personal and private use of official transport. However, as in the case of all other benefits and amenities, this requirement has been taken into account in so fixing the *gross* salary of Ministers under Clause 3(1) of the Bill that they may not be out-of-pocket by reason of this change.

Clauses 7 to 11:

These are self-explanatory and make no change in the present position.

Clause 12:

Seeks to repeal Act LVIII of 1952.

FINANCIAL MEMORANDUM

1. Clause 3 of the Bill involves additional expenditure on the salaries of Ministers, as follows:

In the case of Ministers (other than Deputy Ministers)	Rs. 4,23,000 (gross) per Minister <i>per annum</i> .
In the case of Deputy Ministers	Rs. 1,74,000 (gross) per Dy. Minister <i>per annum</i> .

2. Almost the whole of this will be recouped mainly by certain recoveries to be made from the Ministers, and partly by the abolition of their Sumptuary Allowance, as shown below:

Particulars	Amount Rs.		Clause of the Bill
	Minister	Dy. Minister	
a. Additional Income-tax and surcharge (at 1971-72 rates)	373,670	137,720	3(2)
b. Recovery of charges towards :			
(i) Rent, Rates & taxes and Repairs, Decoration, and Maintenance of Furnished Residence and buildings appurtenant thereto including staff quarters	26,400	19,200	4(1)
(ii) Salaries of necessary staff attached thereto	6,000	6,000	..
(iii) Electricity, Water and Telephone	3,600	3,600	..
(iv) Travelling for private, Personal and Political purposes included in T.A.D.A. Bills	7,200	7,200	5(1)
(v) Private use of official transport			
c. Abolition of Sumptuary Allowance	6,000	*	5
	Rs. 422,870	Rs. 173,720	

3. Hence, the *net additional expenditure* involved under the Bill will be (Rs. 423,000—422,870) = Rs. 130 *per annum per Minister* and (Rs. 174,000—173,720) = Rs. 280 *per annum per Deputy Minister*.

4. Accordingly the *total net additional expenditure* involved under this Bill is estimated at less than Rs. 10,000 *per annum* as follows:

In respect of 37 Ministers = (130 × 37)	4,810
In respect of 18 Deputy Ministers = (280 × 18)	5,040
TOTAL	Rs. 9,850

*Deputy Ministers get no Sumptuary Allowance.

MEMORANDUM REGARDING DELEGATED LEGISLATION

The **extent** of delegation under Clause 11 of the Bill is well within the usual **scope** of Delegated Legislation.

BILL No. 94 OF 1971

A Bill further to amend the Constitution of India.

BE it enacted by Parliament in the Twenty-second Year of the Republic of India as follows:—

1. (1) This Act may be called the Constitution (Amendment) Act, 1971. Short
title
and
commence-
ment.
- (2) It shall come into force at once.
2. To article 141 of the Constitution, the following proviso shall be added, namely:— Amend-
ment of
article 141.

“Provided that it shall not be binding on the Constitution Bench of the Supreme Court which may be constituted from time to time under articles 143A and 145A.”

Insertion of new article 143A.

3. After article 143 of the Constitution, the following new article shall be inserted, namely:—

Power of President to refer the question of constitutional law to a Constitution Bench.

“143A. If at any time it appears to the President that a decision by the Supreme Court, otherwise than by the Constitution Bench, or by any High Court, on a question of law as to the interpretation of the Constitution, requires further judicial consideration, the President may refer the question to the Supreme Court for hearing and decision by a Constitution Bench of the Supreme Court to be constituted as provided for in article 145A:

Provided that the decision of the Constitution Bench shall be by the majority of the Judges present at the hearing of the case.”.

Insertion of new article 145 A.

4. After article 145 of the Constitution, the following new article shall be inserted, namely:—

Question of validity of a law under article 13 to be referred to a Constitution Bench and the Constitution of the Bench.

“145A. (1) If in the course of any proceeding pending before the Supreme Court, any law is challenged as void under article 13 and it appears to the Court that there are valid grounds therefor, or on receipt of report from any High Court under article 226A, the question as to whether the law is void under article 13 shall be referred to the Chief Justice and the Chief Justice shall, in consultation with the President, constitute a Constitution Bench of the Supreme Court to decide the question.

(2) The number of Judges to serve on a Constitution Bench shall be nine or such more as the President may fix:

Provided that the Judges to be appointed to the Bench may include Judges eligible for appointment under articles 127 and 128.

(3) No judgment shall be delivered by the Constitution Bench of the Supreme Court adjudging any law as constitutionally void, save with the concurrence of two-thirds of the Judges present at the hearing of the case, but nothing in this clause shall be deemed to prevent a Judge, who does not concur, from delivering a dissenting judgment.

(4) Judgment delivered by the Constitution Bench shall be the law declared by the Supreme Court and article 141 with the proviso shall apply thereto.”.

Insertion of new article 226A.

5. After article 226 of the Constitution, the following new article shall be inserted, namely:—

High Court Judgment to be reported to Supreme Court.

“226A. Every judgment of the High Court adjudging any law as void under article 13 should, within 15 days of the pronouncement thereof, be reported to the Supreme Court for further scrutiny by a Constitution Bench of the Supreme Court under article 145A, and the said judgment shall not operate unless the Constitution Bench of the Supreme Court by interim orders or in final adjudication, directs that the judgment shall operate.”.

6. In article 368 of the Constitution,—

Amend-
ment of
article
368.

(a) the existing article shall be renumbered as clause (2) thereof, and before clause (2) as so renumbered, the following clause shall be inserted, namely:—

“(1) The Parliament shall have the authority to amend this Constitution and, to that end, to enact, delete or modify any article or Schedule thereof in accordance with the procedure laid down in clause (2).”;

(b) in clause (2) as so renumbered,—

(i) for the words “only by the introduction of a Bill for the purpose in either House of Parliament”, the words “by moving in either House of Parliament a resolution with the terms of the proposed amendment specifically stated therein” shall be substituted;

(ii) for the word “Bill” wherever it occurs, the word “resolution” shall be substituted; and

(c) after clause (2) as so renumbered, the following clause shall be inserted, namely:—

“(3) Nothing in article 13 shall apply to any amendment effected in this Constitution.”.

STATEMENT OF OBJECTS AND REASONS

The Constitution of India enjoins on the President of India the task of "preserving, protecting and defending" the Constitution. The Legislatures, Central and of the States, are to enact laws in accordance with the provisions of the Constitution. The judiciary is to enforce the Fundamental Rights at the instance of citizens seeking its protection. It is obvious that the President, the Legislatures and the Judiciary will have to interpret the Constitution in discharging their constitutional functions. It has, however, been happening and, of late, in an increasing scale that the Legislatures and the Judiciary conflict in the matter of their respective interpretation of the Constitution.

It is not disputed that in the event of a conflict, the interpretation by the judiciary must prevail. But what is it that would constitute "the view of the judiciary" in substance and essence? This question has come up to the fore in the wake of the judgment in the Golaknath case. By the marginal majority of one single Judge the Supreme Court has laid down that the Parliament has no power to amend the Fundamental Rights. The question is whether a marginal majority of one judge sufficient to constitute "the mind of the judiciary" so as to prevail against the weight of the Parliament of India.

The law of the Constitution of India is fundamental for the people of India. It is essential that the stream of constitutional law is not vitiated by faulty interpretations. To that end, the Fathers of the Constitution took the major precaution of providing under article 145(3) that where a question of law touching on Constitution is to be determined there should be a minimum of five Judges. But events have proved that even this is not adequate. It is also necessary that when conflict in the interpretation of Constitution arises as between the Legislature and the Judiciary, it must be settled at the highest judicial level with an overwhelming majority of the deciding Judges. In so deciding, the concerned Judges are not to be bound down by what another set of Judges might have said; but should have the freedom to decide the question according to their free judgment. It should not further be that the President is to remain a helpless spectator even when he feels that a wrong judicial interpretation vitiates the constitutional law. He should be empowered to initiate steps to settle the question at the highest level. The verdict of the recent election has demonstrated that the people of India do not want to take away from the Parliament its power to amend the Fundamental Rights, if need be. Specific constitutional provision is, therefore, urgently called for to undo the ruling which the Supreme Court gave in the Golaknath case by the marginal majority of one single judge. It is with these purposes and objects in view that these amendments are proposed.

NEW DELHI;

C. M. STEPHEN

The 23rd June, 1971,

BILL No. 93 OF 1971

A Bill further to amend the Land Acquisition Act, 1894.

BE it enacted by Parliament in the Twenty-second Year of the Republic of India as follows:—

- | | |
|---|---|
| 1. (1) This Act may be called the Land Acquisition (Amendment) Act, 1971. | Short
title,
extent
and
com-
mence-
ment. |
| (2) It extends to the whole of India except the State of Jammu and Kashmir. | |
| (3) It shall come into force at once. | |

Amend-
ment of
section 11.

2. In section 11 of the Land Acquisition Act, 1894 (hereinafter referred to as the principal Act) for the words, figures and brackets, "at the date of the publication of the notification under section 4, sub-section (1)", the words "at the date of the acquisition" shall be substituted.

1 of 1894.

Insertion
of new
section
15A.

3. After section 15 of the principal Act, the following new section shall be inserted, namely:—

"15A. Whenever bulk acquisition of land involves displacement of one hundred or more families, it shall be the responsibility of the acquiring authority to provide for the rehabilitation of these displaced persons in a manner to be prescribed by Rules."

Amend-
ment of
section
23.

4. In sub-section (1) of section 23 of the principal Act, for the words, figures and brackets, "at the date of the publication of the notification under section 4, sub-section (1)" the words "at the date of the acquisition" shall be substituted.

STATEMENT OF OBJECTS AND REASONS

Section 23 of the Land Acquisition Act, 1894, enjoins that in determining the amount of compensation for land to be acquired under the Act, the Court shall take into account the market value of land on the date of publication of notification under section 4 of the Act. When the intervening period between the date of notification and the date of acquisition is long, the owner is entitled to a compensation which is wholly insufficient to buy an equivalent area of land with similar advantages. Our aim should be to pay a fair and reasonable price for land to be acquired, and to pay a price much below the market price is undoubtedly unfair and unreasonable. The Law Commission has also recommended that as far as possible everyone who is deprived of his property by compulsory acquisition should be awarded a compensation so as to place him in substantially the same position in which he was before the acquisition. Hence the Bill.

NEW DELHI;

S. C. SAMANTA.

The 28th June, 1971.

FINANCIAL MEMORANDUM

The Bill will no doubt involve expenditure but an estimate of such expenditure cannot be given at present. The expenditure will depend on several factors such as the number and magnitude of Projects etc. which may, in future, have to be taken up for any public purpose. This factor alone cannot be determined now.

BILL No. 96 OF 1971.

A Bill further to amend the Constitution of India.

BE it enacted by Parliament in the Twenty-second Year of the Republic of India as follows:—

- | | |
|---|----------------------------------|
| 1. This Act may be called the Constitution (Amendment) Act, 1971. | Short
Title. |
| 2. In article 16 of the Constitution, after clause 1, the following clause shall be inserted, namely:— | Amend-
ment of
article 16. |
| <p>“(1A) There shall be equality of pay for equal work both for men and women in all spheres of work”.</p> | |

STATEMENT OF OBJECTS AND REASONS

Explaining the objectives of the Directive Principles of State Policy, article 37 of our Constitution says that the principles laid down in that Chapter should be considered "fundamental in the governance of the country and it shall be the duty of the State to apply these principles in making laws".

More than two decades have passed since the Constitution was adopted. Still, the inequality between man and woman, in getting equal wage for equal work, remains as before and if it is left to itself there is hardly any hope that the situation will change in future. The average level of the consciousness of our common people has reached to that extent that they will have a sympathetic approach and rational understanding if statutory provisions are made for the implementation of this principle. For achieving such a noble objective, sometimes, a nation has to take a course, which might cause pain to a few. In the interest of the socio-economic advancement of the society and also to achieve still greater progress, such steps become unavoidable.

The Constitution should not lag behind the consciousness of the people. It should express their feelings and aspirations. Hence, this Bill for providing equality for men and women in getting equal pay for equal work.

NEW DELHI;

C. K. CHANDRAPPAN.

The 3rd July, 1971.

FINANCIAL MEMORANDUM

This Bill seeks to provide for equal pay for equal work for men and women in all spheres of human activity.

It is estimated that this will entail an annual expenditure of Rs. 15 crores from the Consolidated Fund of India.

No non-recurring expenditure is involved. Expenditure in respect of the private sector will be borne by the private employers.

BILL No. 108 OF 1971

A Bill to provide for inclusion of certain castes in the lists of Scheduled Castes and for matters connected therewith.

BE it enacted by Parliament in the Twenty-second Year of the Republic of India as follows:—

Short
title.
Amend-
ment of
Schedul-
ed Castes
Orders.

1. This Act may be called the Constitution (Scheduled Castes) Orders (Amendment) Act, 1971.

2. (1) The Constitution (Scheduled Castes) Order, 1950 shall stand C.O. 19.
amended as specified in the First Schedule.

(2) The Constitution (Pondicherry) Scheduled Castes Order, 1964 shall C.O. 68.
stand amended as specified in the Second Schedule.

THE FIRST SCHEDULE

[See section 2(1)]

C.O. 12. 1. In the Constitution (Scheduled Castes) Order, 1950,—

(i) after paragraph 2, the following new paragraphs shall be inserted, namely:—

“2A. Any person who belongs to any caste included in any Part of the Schedule and who ceases to reside in the State to which he belongs and migrates to any other State or Union territory, he shall continue to be a member of the Scheduled Caste in that State or Union territory. In the other State or Union territory where he voluntarily resides, notwithstanding the fact that the caste to which he belongs is not a Scheduled Caste in that other State or Union territory, he shall be deemed to belong to the Scheduled Caste.

2B. Notwithstanding anything contained in any law for the time being in force or in any custom or usage to the contrary, a woman who marries a person belonging to a caste specified in any Part of the Schedule shall be deemed to belong to that Scheduled Caste to which her husband belongs.”; and

(ii) in the Schedule, in Part VII relating to the State of Tamil Nadu, in sub-part 1,—

(a) after entry 1, the following caste shall be inserted, namely:—

“1A. Kaiththari Nesavalargal (Handloom Weavers)”;

(b) after entry 2, the following castes shall be inserted, namely:—

“2A. Meenavargal (Fishermen)

2B. Navithar (Barbers)”.

THE SECOND SCHEDULE

[See section 2(2)]

1. In the Constitution (Pondicherry) Scheduled Castes Order, 1964,— C. O. 68.

(i) after paragraph 2, the following new paragraphs shall be inserted, namely:—

“3. Any person who belongs to any caste included in the Schedule and who ceases to reside in the Union territory of Pondicherry and migrates to any other State or Union territory, he shall continue to be a member of the Scheduled Caste of that Union territory. In the other State or Union territory, where he voluntarily resides, notwithstanding the fact that the caste to which he belongs is not a Scheduled Caste in that other State or Union territory, he shall be deemed to belong to the Scheduled Caste.

4. Notwithstanding anything contained in any law for the time being in force or in any custom or usage to the contrary, a woman who marries a person belonging to a caste specified in the Schedule shall be deemed to belong to that Scheduled Caste to which her husband belongs.”; and

(ii) in the Schedule,—

(a) after entry 4, the following caste shall be inserted, namely:—

“4A. Kaiththari Nesavalargal (Handloom Weavers).”;

(b) after entry 7, the following castes shall be inserted, namely:—

“7A. Meenavargal (Fishermen).

7B. Navithar (Barbers) ”.

STATEMENT OF OBJECTS AND REASONS

The members of Kaiththari Nesavalargal, Meenavargal and Navithar castes have been suffering from various social, economic and political disabilities arising out of traditional practice of untouchability. Since this class of people were so backward that they could not convey their voice to the authorities responsible for preparing and finally issuing the list of Scheduled Castes, they remain excluded from that list, in spite of various Committees and Commissions appointed to investigate the conditions of socially and educationally backward classes. Even for bringing to the notice of such Committees and Commissions, the members of these castes could not have a single individual who could represent their case. It was so because neither they have education nor economic resources. It is high time that these people are included in the list of Scheduled Castes so that their social, economic and educational conditions may improve.

Opportunity has also been taken to make provision in the Orders regarding persons belonging to Scheduled Castes who migrate to another State or Union territory.

Hence this Bill.

NEW DELHI;

C. CHITTIBABU.

The 6th July, 1971.

BILL NO 102 OF 1971

A Bill to stop factories, municipalities, local bodies, motor-vehicles, household burning poisonous fuels and other agencies and individuals from emitting poisonous gases in the atmosphere and discharging their refuse, fermented molasses, other stinking substances, night soil, sullage and dirty water in rivers, rivulets and open spaces, making water undrinkable and atmosphere unhygienic, foul and unbearable, thus creating a great public nuisance and hazard for health.

BE it enacted by Parliament in the Twenty-second Year of the Republic of India as follows:—

Short
title,
extent
and
com-
mence-
ment.

1. (1) This Act may be called the Prevention of Pollution of Air and Water Act, 1971.

(2) It extends to the whole of India.

(3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

Defini-
tions.

2. In this Act, unless the context otherwise requires,—

(a) “factory” means any factory defined as such under the Industrial Disputes Act, 1947;

14 of 1947.

(b) "municipalities" and "local bodies" shall, in a particular State, have the meaning assigned to these terms in the State Acts concerning these bodies; and

(c) "refuse" means waste by-products of a factory, municipality, local body or other agency or individual, which are thrown away as rubbish.

3. The Central Government shall have power to order any factory, municipality, local body or any other agency, individual household or individuals to stop emitting poisonous gases and discharging their refuse, fermented molasses, other stinking substances, night soil, sullage and dirty water in rivers, rivulets and open spaces, making water undrinkable and atmosphere unhygienic, foul and unbearable, thus creating a great public nuisance and hazard for health.

Power of Central Government to order factories, etc. to stop acts of pollution of air and water.

4. On failure of any of the aforesaid bodies to carry out the orders issued to them, they will be liable to punishment which may extend to one year's rigorous imprisonment and fine which may extend to Rs. 25,000.

Punishment

Explanation.—The Proprietor or the Manager of a factory, Chairman or Executive Officer of a municipality or a local body, shall be liable for punishment provided in this section if they are found to be responsible for disobeying the orders of the Central Government.

5. (1) The Central Government shall make rules to carry out the purposes of this Act.

Power to make rules.

(2) Every rule made by the Central Government shall be laid before each House of Parliament before it becomes effective.

STATEMENT OF OBJECTS AND REASONS

The necessity for such a legislation has been long felt. Recent Indian surveys into the ill-effects of air-pollution lend urgency to this matter. According to the survey, the emission from a rayon factory in the area is estimated to have damaged crop spread over 1,000 acres causing a loss of Rs. 5 lakhs while the discharge from a foundry destroyed a crop of mangoes worth thousands of rupees. The notion that India is under-developed and that the industrial air pollution problem has not yet reached the danger level is not borne out by facts. Eighty per cent of the production of fertilisers, chemicals, steel and various consumer goods is concentrated in about eight centres where factories and residential quarters are located in close proximity.

In air pollution, extent is indicated, by the concentration at certain levels of suspended dust particles, oxide of sulphur, and oxide of nitrogen. Most developed countries today are imposing controls on these pollutants and the legal limits are fixed.

For instance, in the U.S. sulphur dioxide is not permitted to exceed 0.1 units per million and in the U.S.S.R. and West Germany not more than 0.05 per million. According to studies carried out by the Central Public Health Engineering Institute recently, its level in Delhi is 0.223 and in Calcutta 0.71.

The dust fall in most European countries is between 150 and 200 tons per square mile. In Delhi it was 811 tons per square mile in January and in Calcutta it was 590 tons in December, 1970.

The oxide of nitrogen is around 0.1 in most urban centres of the world. It is 0.05 parts per million in Calcutta, 0.03 in Delhi and 0.12 in Bombay.

The heavy dust fall in Indian cities may cause asthma, cough and other irritations which gradually weaken the physical stamina of the people living there.

There are various other pollutants like hydrocarbon, aldehydes and ketone emitted by motor vehicles and still others by the use of domestic fuel, the most harmful of which is the bituminous fuel used in Calcutta. These can cause cancer and allergy. The burning of solid wastes, pesticides, weed killers and agricultural chemicals add to air pollution.

In Delhi, smoking buses, many of them belonging to Delhi Transport Undertaking, are a serious cause of air pollution.

Discharge of night soil and sullage water of big municipalities and discharge of water from big tanneries, sugar factories and other industrial concerns, pollutes the Ganges water in Kanpur, Banaras, Patna and other places which makes it dangerous for health of the population. Discharge of their dirty water and fermented molasses in open spaces by sugar factories makes the atmosphere unhygienic, stinking and unbearable. The discharge of such water and molasses in rivulets makes the water of the rivulets unfit for drinking even for cattle and destroys thousands of acres of crop. The Bill is intended to stop this pollution of air and water.

NEW DELHI;
The 8th July, 1971.

SHIBBAN LAL SAKSENA.

MEMO REGARDING DELEGATED LEGISLATION

Clause (5) of the Bill empowers the Central Government to make rules for the enforcement of the provisions of this Act. Before these rules become effective, they will have to be laid before each House of Parliament. Therefore, there is no danger of any misuse of these powers.

The delegation of power is of normal character.

BILL No. 104 OF 1971

A Bill further to amend the Constitution of India.

BE it enacted by Parliament in the Twenty-second Year of the Republic of India as follows:—

Short
title.

1. This Act may be called the Constitution (Amendment) Act, 1971.

Amend-
ment of
article 19.

2. In article 19 of the Constitution, in sub-clause (f) of clause (1), after the word “property”, the following words shall be inserted, namely:—

“within such limits as may be prescribed by law”.

3. After article 19 of the Constitution, the following new article shall be inserted, namely:—

Insertion of new article 19A.

“19A. All citizens shall have the right—

Protection of certain rights regarding work, education, etc.

(i) to work and to a living wage after attaining the age of 16 years;

(ii) to have free education upto the Higher Secondary Standard;

(iii) to have State assistance in cases of unemployment, old age, sickness and disablement;

(iv) to free medical treatment;

(v) to have equal pay for equal work;

(vi) to exercise franchise on attaining 18 years of age; and

(vii) to bear small arms.”.

4. In article 22 of the Constitution,—

Amendment of article 22.

(a) in clause (3),—

(i) in sub-clause (a), the word “or” shall be omitted; and

(ii) sub-clause (b) shall be omitted; and

(b) clauses (4) to (7) shall be omitted.

5. In article 31 of the Constitution,—

Amendment of article 31.

(a) for clause (1), the following clause shall be substituted, namely:—

“(1) The right of citizens to their land holdings, handicrafts and small scale industries, houses, trade, profession or vocation, implements and other accessories necessary to carry on their trade profession or vocations within the limits prescribed by law, and the right of citizens in their incomes and savings from their work, and the income derived from the above mentioned properties, articles of domestic economy and use and articles of personal use and convenience as well as the right of citizens to inherit personal property shall be protected by law.”;

(b) after clause (1), the following clause shall be inserted, namely:—

(1A) All other property besides that specified in clause (1) of this article may be acquired by authority of law for public purposes or for securing justice, liberty and equality to all citizens, without paying any compensation or paying such amounts as may be fixed by such law or as may be determined according to the principles laid down in such law for paying such compensation. No such law shall be called in question by any Court including the Supreme Court.”; and

(c) clause (3) shall be omitted.

6. In article 31A of the Constitution, the first proviso to clause (1) shall be omitted.

Amendment of article 31A.

STATEMENT OF OBJECTS AND REASONS

It is necessary to put reasonable restrictions on the right to hold property to prevent concentration of wealth and means of production to the common detriment.

Right to work is one of the Directive Principles, but does not serve the desired purpose. This Bill provides that every citizen who is more than sixteen years of age shall have the right to work and it shall be the duty of the State to provide subsistence allowance to all citizens who cannot work due to old age, sickness, disablement or failure on the part of the State to provide work. All citizens over the age of 18 years shall have the right to exercise franchise.

Article 45 of the Constitution provides for free and compulsory education for children upto the age of fourteen years. This is one of the Directive Principles of State Policy, just a pious wish. Provision has been made in the Bill for free education upto Higher Secondary Standard. Certain rights like the right to free medical treatment and the right to bear small arms have been included in the list of fundamental rights. Provisions of Article 22 which guarantee protection against arrest and detention in certain cases have been misused so far. Hence, certain safeguards for the liberty of citizens have been provided for.

NEW DELHI;
The 9th July, 1971.

A. K. GOPALAN.

FINANCIAL MEMORANDUM

The Bill seeks to assure every citizen the right to work and a living wage, free education up to Higher Secondary Standard, unemployment, sickness and disablement benefits and free medical treatment (clause 3). It is estimated that this will entail an annual expenditure of fifty crores of rupees from the Consolidated Fund of India in respect of Union territories. No non-recurring expenditure is involved. Expenditure in respect of the States will be met by the State Governments.

S. L. SHAKDHER,
Secretary.

